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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/892,612	06/28/2001	Jean-Francois Bouquet	P06152US01/BAS	5691

881 7590 04/15/2003

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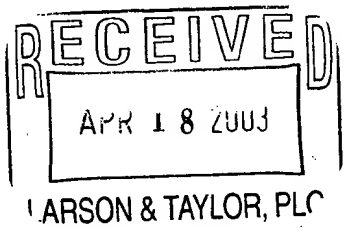

EXAMINER
ZEMAN, ROBERT A

ART UNIT	PAPER NUMBER
1645	

DATE MAILED: 04/15/2003

7-15-2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/892,612	BOUQUET ET AL.	
	Examiner	Art Unit	
	Robert A. Zeman	1645	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 February 2003* .

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

The amendment and response filed on 2-3-2003 are acknowledged. Claim 1 has been amended. Claims 1-9 are pending and currently under examination.

Terminal Disclaimer

The terminal disclaimer filed on 2-3-2003 disclaiming the terminal portion of any patent granted on this application that would extend beyond the expiration date of U.S. Patent 6,280,970 has been reviewed and is accepted. The terminal disclaimer has been recorded.

The terminal disclaimer filed on 2-3-2003 disclaiming the terminal portion of any patent granted on this application that would extend beyond the expiration date of U.S. Patent 6,255,108 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Priority

The amendment to the specification is sufficient to overcome the objection outlined in the previous Office action. Consequently, Applicant has complied with all conditions for receiving the benefit of an early filing date under 35 U.S.C. 120.

Claim Objections Withdrawn

The objection to the specification for the lack of differentiation between "LTR" and "Deleted LTR" is withdrawn in light of the amendment thereto.

Claim Objections Maintained

The objection to the specification for failing to properly label the Brief Description of Drawings section is maintained for reasons of record. It is noted that Applicant has failed to address this objection in his response. (P. 4, 2nd ¶, 2/3/03(A))

Claim Rejections Withdrawn

The rejection of claim 8 under 35 U.S.C. 112, first paragraph, for not complying with the deposit requirements is withdrawn in light of Applicant's statement regarding compliance to said requirements.

The rejection of claims 1-9 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 10 of U.S. Patent 6,280,970 is withdrawn in light of the filed terminal disclaimer.

The rejection of claims 1-5 and 9 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 15 of U.S. Patent 6,255,108 is withdrawn in light of the filed terminal disclaimer.

The rejection of claim 1 under 35 U.S.C. 112, second paragraph, as being rendered vague and indefinite by the use of the phrase "on an avian cell line" is withdrawn in light of the amendment thereto.

The rejection of claim 1 under 35 U.S.C. 112, second paragraph, as being rendered vague and indefinite by the use of the phrase "comprising avian embryonic fibroblast cells" is withdrawn in light of the amendment thereto.

Claim Rejections Maintained

35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

The rejection of claims 1-9 under 35 U.S.C. 112, second paragraph, as failing to include essential steps is maintained for reasons of record. The amendment to claim 1 is insufficient to overcome said rejection. It is unclear what steps are involved in "allowing the virus to propagate".

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being rendered vague and indefinite by the use of the term "which are immortalized". It is unclear whether Applicant is referring to the cells **and** their progeny or merely the progeny.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The rejection of claim 9 under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Brugh et al. (Avian Diseases, Vol. 28, No. 1, 1984, pages 168-178) is maintained for reasons of record.

Applicant argues:

1. Claim 9 is not directed to a virus *per se*, but to a virus preparation.

2. Claim 9 is not only direction to the virus itself but also the impurities that are specific for the cell substrate used for the production of the virus.

3. Use of the avian cell line according to claim 1 leads to unique virus preparations.

Applicant's arguments have been fully considered and deemed non-persuasive. Contrary to Applicant's assertion, claim 9 is drawn to a virus, not a virus preparation. Hence, since the instant claim reads on any virus, the disclosure by Brugh et al. anticipates the limitations of the rejected claim.

Conclusion

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Zeman whose telephone number is (703) 308-7991. The examiner can normally be reached on Monday- Thursday, 7am -5:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (703) 308-3909. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

LYNETTE R. F. SMITH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

Robert A. Zeman
April 10, 2003